

This **Agreement** is made this **1st day of July 2020** (the "Effective Date") by and between **Netsmart Technologies, Inc.**, a Delaware corporation with offices at 4950 College Boulevard, Overland Park, Kansas 66212, (hereinafter referred to as "**Contractor**") and the **County of Mendocino**, a political subdivision of the State of California, on behalf of the Mendocino County Behavioral Health Department (hereinafter referred to as "**County**").

RECITALS

The County has utilized Avatar application through Netsmart Technologies, Inc. as the electronic medical records system for the Health Department – Behavioral Health Bureau since 2002. The County currently hosts the hardware, software, and database and the Contractor has provided software subscription, maintenance, and technical support. This Agreement states the terms and conditions under which Netsmart will provide Maintenance and Support services to the County.

1.0 DEFINITIONS

As used in this Agreement, the following definitions apply to the following terms:

- (a) "Applicable Law" means, in the case of software compliance, Federal or State of California law, rules or regulations that relate to the functionality of the Software. In all other cases Applicable Law means Federal, State of California or local laws, rules and regulations that apply to the conduct of Vendor's general business operations.
- (b) "Encumbrance" means the process by which amounts payable under this Agreement are posted to the County's financial records for the payment then due under this Agreement, reducing the related appropriations balance.
- (c) "Charges" means the amounts to be paid by County for the right to use the Licensed Programs, for services provided to County and for hardware or other Third-Party Products acquired by County under the terms of this Agreement. The Charges and Payment Terms for Funds Committed under this Agreement are described in Schedule A.
- (d) "County Database" means a collection of data records that are maintained as a single logical area on a single computer system that is used, accessed, or acted upon by Licensed Programs.
- (e) "Licensed Programs" means both the Netsmart Programs and the Third-Party programs.
- (f) "Netsmart Programs" means the Netsmart computer programs in object code form and their associated documentation. Schedule A lists separately the various modules of the Netsmart Programs purchased for the term of this agreement by the County.
- (g) "Specifications" means the description and features of the Licensed Programs as set forth in the documentation relating to the Licensed Programs. Those Netsmart Programs covered under the terms of this Agreement are identified in Schedule A.
- (h) "Problem or Defect" means any failure of the Licensed Programs to operate in substantial conformance with the Specifications.
- (i) "Support Services" means the maintenance and support services to be provided by Netsmart in accordance with Schedule B.

- (j) "Third Party Products" means any product acquired by Netsmart from an outside vendor on behalf of County under the terms of this Agreement. Third Party Products consisting of software are called Third Party Programs. Third Party Products are described in Schedule A.

2.0 LICENSED PROGRAMS

- (a) Nothing in this Agreement will be deemed to convey any title or ownership interest in the Licensed Programs to County. County acknowledges Contractor's rights and the rights of the owner of the Third-Party Programs in the Licensed Programs and agrees that the Licensed Programs are trade secrets and unpublished works on which Contractor and such third party(s) hold and will hold the sole and exclusive copyright. County will not dispute the rights of Contractor and the third party(s) in the Licensed Programs and will not sell, disclose, lease, sublease, lend or otherwise make the Licensed Programs available to others including third party hosting providers.
- (b) No copies of the Licensed Programs may be made by County without the prior written consent of Contractor except for backup purposes in accordance with normal data processing practices. County agrees to reproduce any copyright notices and/or other proprietary legends, regardless of form, contained in, affixed to, or appearing on the Licensed Programs.
- (c) County will not disassemble or reverse engineer any of the Licensed Programs nor attempt to access or modify the source code version of the Licensed Programs and will not make any derivations, adaptations, or translations of the Licensed Programs in whole or in part, nor use the Licensed Programs to develop functionally similar computer software or to otherwise compete with Contractor.
- (d) If suggestions made by County are incorporated into subsequent versions of the Licensed Programs, County hereby assigns to Contractor all rights County may have in and to any suggestions, concepts, or improvements concerning the Licensed Programs that may result from County communications to Contractor.
- (e) Upon Contractor's request and with reasonable notice, County agrees to provide Contractor with verification as to the number of users using the Licensed Programs or allow Contractor or its authorized agent to independently audit County's database to verify the same. Should this verification identify usage of the Licensed Programs in excess of the number of licensed users, County agrees to immediately pay Contractor's invoice for the then-current prices for such Licensed Programs for each additional user license.

3.0 COMPLIANCE WITH APPLICABLE LAW & TERMS OF GRANT

- (a) Compliance with Law. In providing services under this Agreement, Contractor shall comply with all Applicable Laws, regulations, and administrative requirements adopted by federal and state governments including, but not limited to, Welfare and Institutions Code, Divisions 5, 6, and 9; California Code of Regulations, Titles 9 and 22; any Short-Doyle and Short-Doyle/Medi-Cal policies as identified in Department of Health Care Services (DHCS) letters, MHSA requirements, California Alcohol and Drug Program requirements, and in the Cost Reporting/Data Collection (CR/DC) Manual. In addition, if Contractor is providing Medi-Cal services pursuant to this Agreement, Contractor shall comply with Title XIX of the Social Security Act, and all other Applicable Laws, regulations and

guidelines pertaining to federally funded mental health programs, including all requirements necessary for Medicaid/Medi-Cal reimbursement for mental health treatment services.

- (b) Compliance with Terms of State and/or Federal Grants. If this Agreement is funded with monies received by the County pursuant to contract(s) with the state and/or federal government in which the County is the grantee, Contractor will comply with all provisions of said contract(s), to the extent applicable to Contractor as a subgrantee under said contract(s), and said provisions shall be deemed a part of this Agreement as if fully set forth herein. Upon request, County will deliver a copy of said contract(s) to CONTRACTOR at no cost to Contractor.

4.0 TERM OF AGREEMENT

- (a) The initial term, during which Contractor shall provide maintenance and support services for the system as described in the Agreement and attached schedules, shall commence with the Effective Date of the Agreement and continue for a period of two years with the option to extend the Agreement for two additional one year periods. County is not required to state a reason if it elects not to renew.
- (b) If this Agreement includes options for renewal or extension, Contractor must commence negotiations for rate changes a minimum of ninety days (90) prior to the expiration of the Agreement. Both parties must agree to any rate changes in writing.

5.0 COMPENSATION AND PAYMENTS

- (a) In consideration of the licenses granted hereunder, Services to be performed and Third-Party Products to be provided by Contractor, County agrees to pay Contractor the Charges at the times and in the amounts set forth in **Schedule A**.

With the exception of the initial invoice, which is due upon Agreement signing and Encumbrance, undisputed invoices are payable in accordance with Section 5(d) below. Failure to make timely payment is considered a material default of the Agreement.

- (b) Negotiations for rate changes shall be commenced, by Contractor, a minimum of ninety days (90) prior to the renewal date of the Agreement.
- (c) Charges will not be increased for any extension term by more than the most recent increase in the US Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U) - Medical Care or 5%, whichever is higher.
- (d) Invoice amounts shall be billed directly to the ordering department.
- (e) Contractor shall reference the Agreement number on all invoices submitted to the County. The invoice shall set forth the amounts. Contractor shall submit such invoice periodically or at the completion of services, but in any event, not later than claimed by Contractor for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. The County shall certify the invoice, either in the requested amount or in such other amount as the County approves in conformity with this Agreement and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the uncontested amount certified within 60 days of receiving the certified invoice.

6.0 TAXES

The Charges set forth in this Agreement do not include any taxes. Where applicable, there will be added to such Charges, and County will pay, amounts equal to any taxes (however designated, levied, or based) on such Charges including, but not limited to, state and local sales, privilege, property, use or excise taxes, but not including taxes based on the net income of Contractor. If County claims a tax exemption, County will provide to Contractor a certificate of exemption from taxes, or other evidence sufficient to permit Contractor to exclude taxes from Charges.

7.0 INDEMNIFICATION

- (a) Indemnification by Contractor: Intellectual Property Infringement. In the event of any claim by a third party against County (the "Claim Against County"), alleging that the use of the Licensed Programs infringes upon any intellectual property rights of such third party, County will promptly notify Contractor and Contractor will defend County and its officers, agents, and employees against such Claim Against County in County's name but at Contractor's expense, and will indemnify and hold harmless County against any liability paid by County, including but not limited to attorneys' fees and disbursements, arising out of such Claim Against County. In the event such an infringement is found and Contractor cannot either procure the right to continued use of the Licensed Programs, or, within forty-five (45) days of such finding, and, if Contractor has a right to appeal, the exhaustion of those rights by Contractor, (unless such period is extended by County), replace or modify the Licensed Programs with a non-infringing program of comparable quality and functionality, then Contractor shall terminate the license of the Licensed Programs, and will refund to County all license fees, if any, paid by County, pursuant to this Agreement, reduced by **1/60th** for each full month from the date of first use of the Licensed Programs provided under this Agreement, until the date of termination. Contractor will not have any liability under Section 10(b), and Contractor will be indemnified by County with respect to any Claim Against County, to the extent that the Claim Against County is based upon (i) the use of the Licensed Programs in combination with other products or services not made or furnished by Contractor, provided that the Licensed Programs alone are not the cause of such Claim Against County; or (ii) the modification of the Licensed Programs or any portion thereof by anyone other than Contractor, provided that the Licensed Programs in unmodified form are not the cause of such Claim Against County.
- (b) Indemnification by Contractor: Other Claims. Contractor shall indemnify, defend, and hold harmless County, its officers, agents, and employees, from and against any and all claims by a third party and any and all liabilities and losses incurred by County on account of such claims (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) caused by Contractor's negligence or willful misconduct in connection with the performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of County. "Contractor's performance" includes Contractor's acts or omissions and the acts or omissions of Contractor's officers, employees, agents and subcontractors.
- (c) Indemnification by County: Failure to Use Licensed Programs as Permitted. County will indemnify and hold harmless Contractor from and against all claims, suits or actions by any third party against

Contractor (the "Claims Against Contractor") relating to, arising out of or resulting from County's failure to use the Licensed Programs as permitted under this Agreement, or any claim by any party receiving services from County ("Claim for Services"). Contractor shall provide County with prompt notice of any such Claim Against Contractor or Claim for Services, allow County sole control of the defense, and shall fully cooperate with County in defending the Claim Against Contractor or Claim for Services.

8.0 WARRANTIES

- (a) *Licensed Programs.* Contractor warrants that the Licensed Programs will substantially conform in all material respects with the requirements of this Agreement and their Specifications. If a Problem or Defect occurs while County is receiving Support Services, Contractor will correct the Problem or Defect in accordance with the Support Services provisions set forth in Schedule B.
- (b) *Infringement.* Contractor further represents and warrants that it has the right to grant the licenses granted to County hereunder and that to the best of Contractor's knowledge the Licensed Programs do not infringe upon or violate the United States patent rights of any third party and do not infringe upon or violate the copyright, or trade secret right of any third party.
- (c) If County or anyone acting with the consent of or under the direction of County fails to use the Licensed Programs as permitted under this Agreement, then (i) with respect to the warranty made under Section 8(a), Contractor shall have no obligation or liability to County with respect to any Problem or Defect caused by such failure to use the Licensed Programs as permitted under this Agreement, and (ii) with respect to the representation and warranty under Section 8(b), Contractor shall have no obligation or liability to County with respect to any third party claim of patent, copyright or trade secret infringement or misappropriation arising from such failure to use the Licensed Programs as permitted under this Agreement. County will have an affirmative obligation to immediately inform Contractor in writing of any known failure to use the Licensed Programs as permitted under this Agreement.
- (d) The limited warranty described under Section 8(a) will not apply unless the County's hardware and software system components meet Contractor's minimum requirements.
- (e) *Third Party Programs* In the event Contractor provides any Third Party Programs to County in connection with this Agreement, the following shall apply: (1) Contractor shall specifically identify in writing all Third Party Programs in Schedule A; (2) Contractor shall attach to Schedule A written copies of all third party license agreements applicable to County; and (3) Contractor warrants that (i) it has the right to license any Third Party Programs licensed to County under this Agreement; (ii) to the best of Contractor's knowledge, the Third Party Programs do not, and the use of the Third Party Programs by County as contemplated by this Agreement will not, infringe any intellectual property rights of any third party, and (iii) unless specifically provided otherwise herein, County shall have no obligation to pay any third party any fees, royalties, or other payments for County's use of any Third Party Programs in accordance with the terms of this Agreement. Contractor shall support and maintain all such Third-Party Programs to the same extent as the Licensed Programs.
- (f) *Viruses and Disabling Mechanisms.* Contractor shall use commercially reasonable measures to screen the Licensed Programs to avoid introducing any virus or other destructive programming that are designed (1) to permit unauthorized access or use by third parties to the software installed on County's systems, or (ii) to disable or damage County's systems. Contractor shall not insert into the Licensed Programs any code or other device that would have the effect of disabling or otherwise

shutting down all or any portion of the Licensed Programs. Contractor shall not invoke such code or other device at any time, including upon expiration or termination of this Agreement for any reason.

- (g) *Services*. Contractor warrants that all services provided by Contractor to County under this Agreement shall be performed in a workmanlike manner.
- (h) *No Litigation*. Contractor further warrants there is no pending or threatened litigation that would have a material adverse impact on its performance under this Agreement.
- (i) *Compliance with Applicable Law*. Contractor warrants that the services provided under this Agreement and County's permitted use of the Licensed Programs shall comply with applicable federal and state regulations.
- (j) *Authority*. Contractor has the fully power, capacity and authority to enter into and perform the Agreement and to make the grant of rights contained herein.

9.0 LIMITATION OF WARRANTY

The foregoing warranties are in lieu of all other warranties and conditions express or implied, whether in relation to the licensed programs, hardware or the provision of any services including, but not limited to, those concerning merchantability and fitness for a particular purpose or arising by trade usage or course of dealing. County's exclusive remedy in the event of a breach of the section 8(a) warranty and contractor's sole obligation is to modify the software to eliminate the problem or defect. County's exclusive remedy in the event of a breach of the section 8(b) warranty is set forth in section 9.

10.0 LIMITATIONS OF LIABILITY

- (a) **LIMITATION ON SPECIFIED DAMAGES** EXCEPT FOR BREACH OF THE WARRANTY IN SECTION 8 (b) (INFRINGEMENT), AND THE PARTIES' RESPECTIVE EXPRESS INDEMNITY OBLIGATIONS IN THIS AGREEMENT (INCLUDING IN SECTION 7 (INDEMNIFICATION), SCHEDULE D, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES (INCLUDING DAMAGES RELATED TO DELAYS, LOSS OF DATA, INTERRUPTION OF SERVICE OR LOSS OF BUSINESS OR PROFITS OR REVENUE), EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.
- (b) **LIMITATION ON CUMULATIVE LIABILITY**. EXCEPT FOR THE PARTIES' RESPECTIVE EXPRESS INDEMNITY OBLIGATIONS IN SECTION 7 (INDEMNIFICATION), SCHEDULE D, THE CUMULATIVE LIABILITY OF ONE PARTY TO THE OTHER PARTY FOR ANY ACTUAL OR ALLEGED DAMAGES ARISING OUT OF, BASED ON OR RELATING TO THIS AGREEMENT, WHETHER BASED UPON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY OR ANY OTHER LEGAL THEORY, WILL NOT EXCEED THE TOTAL OF THE LICENSE FEES AND PROFESSIONAL SERVICES FEES PAID TO CONTRACTOR UNDER THIS AGREEMENT.

11.0 INSURANCE

- (a) **Evidence of Coverage:** Prior to commencement of this Agreement, the Contractor shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, a certified copy of the policy or policies shall be provided by the Contractor upon request.

This verification of coverage shall be sent to the County's Contracts/Purchasing Department, unless otherwise directed. The Contractor shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and such insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

- (b) **Qualifying Insurers:** All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Purchasing Officer.

- (d) **Insurance Coverage Requirements:** Without limiting Contractor's duty to indemnify, Contractor shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

- i. Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.
- ii. Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$500,000 per occurrence.
- iii. Workers' Compensation Insurance, if Contractor employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.
- iv. Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the Contractor shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

- (e) **Other Insurance Requirements:** All insurance required by this Agreement shall be with a company acceptable to the County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date Contractor completes its performance of services under this Agreement.

- (f) For each liability policy, Contractor shall provide the County notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Contractor and additional insureds with respect to

claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

- (g) Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Mendocino its officers, agents, and employees as Additional Insureds with respect to liability arising out of the Contractor's work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the Contractor's insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.
- (h) Prior to the execution of this Agreement by the County, Contractor shall file certificates of insurance with the County's contract administrator and County's Contracts/Purchasing Division, showing that the Contractor has in effect the insurance required by this Agreement. The Contractor shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.
- (i) Contractor shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify Contractor and Contractor shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by Contractor to maintain such insurance is a default of this Agreement, which entitles County, at its sole discretion, to terminate this Agreement immediately.

12.0 ACCESS TO AND AUDIT OF RECORDS

- (a) Maintenance of Records. Contractor shall maintain records indicating the nature and extent of all services performed and all payments received under this Agreement for a period of five (5) years after completion of all services pursuant to this Agreement or until all disputes, claims, litigation, or audits have been resolved, whichever occurs later. Contractor shall maintain such records in a form comporting with generally accepted standards and applicable law. Government Code § 8546.7 makes any expenditure of public funds over \$10,000 subject to the examination and audit of the State Auditor for a period of three (3) years after final payment under the Agreement.
- (b) Right to Inspect Records. The County, State Department of Health Care Services (DHCS), the Comptroller General of the United States, the U.S. Department of Health and Human Services, and other authorized federal and state agencies shall have the right to inspect any and all books, records, and facilities maintained by Contractor during normal business hours to evaluate the use of funds and the cost, quality, appropriateness, and timeliness of services.
- (c) Overpayment. If the results of any audit show that the funds paid to Contractor under this Agreement exceeded the amount due, then Contractor shall pay the excess amount to County in cash not later than sixty (60) days after the final audit settlement; or, at County's election, County may recover the excess or any portion of it by offsets made by County against any payment(s) owed to Contractor under this or any other Agreement.

- (d) Responsibility for Audit Exceptions. Any and all audit exceptions by County or any state or federal agency resulting from an audit of Contractor's performance of this Agreement, or actions by Contractor, its officers, agents, and employees shall be the sole responsibility of the Contractor.

13.0 TERMINATION

- (a) Termination without Cause. The County reserves the right to cancel this Agreement, or any extension of this Agreement, without cause, with thirty days (30) written notice.
- (b) Termination for Cause. Either party may terminate this Agreement for cause, if the other party is in default of any of its material obligations hereunder, and has not commenced cure within thirty (30) days after receiving written notice of default, and effected the cure within ninety (90) days of receipt of notice of default from either party. In the event cure cannot reasonably be affected within ninety (90) days, a party may choose not to cancel this Agreement if the other party acts diligently during the ninety (90) day period following its receipt of notice and completes the cure promptly thereafter.
- (c) Termination or Amendment in Response to Reduction of Government Funding. Notwithstanding any other provision of this Agreement, if Federal, State or local government terminates or reduces its funding to the County for services that are to be provided under this Agreement, County, in its sole and absolute discretion after consultation with the Contractor, may elect to terminate this Agreement by giving written notice of termination to Contractor effective immediately or on such other date as County specifies in the notice. Alternatively, County and Contractor may mutually agree to amend the Agreement in response to a reduction in Federal, State or local funding.
- (d) In the event of termination for convenience pursuant to Section 13 (a), Contractor shall within thirty (30) days of receipt of notice of termination for convenience submit to the Mendocino County Behavioral Health Department all outstanding invoices for services provided prior to the effective date of the termination for convenience. The Mendocino County Behavioral Health Department shall submit within thirty (30) days of receipt from Netsmart those outstanding invoices of Netsmart that have been certified for payment to the County Auditor-Controller. The County Auditor-Controller shall pay any undisputed invoices in accordance with Section 5(d) above.
- (e) In the event this Agreement is terminated pursuant to Section 13(b) solely due to a breach by County of license rights contained in Section 2, County will, within thirty (30) days of the date of termination of this Agreement, erase from all computer storage any image or copies of the Licensed Programs, related specifications and documentation and will certify in writing to Contractor that the original and all copies of such property have been destroyed.
- (f) Upon Termination of this Agreement for any reason specified in this Section, Contractor will provide a machine-readable copy of the Data in its possession, if any, to County within thirty (30) days of termination of this Agreement.
- (g) Notwithstanding any termination of this Agreement for any reason, the terms and conditions set forth in the following Sections of this Agreement will survive and will be binding on the representatives, successors, heirs and assignees of the parties:
- i) Section 7 Indemnifications
 - ii) Section 9 Limitation of Warranty
 - iii) Section 11 Professional Liability Insurance Tail Coverage

- iv) Section 12 Access to and Audit of Records
- v) Section 13 Termination
- vi) Section 14 Confidentiality
- vii) Section 16 Non-Hiring
- viii) Section 18 General Provisions
- ix) Schedule C Confidentiality of Patient Information
- x) Schedule D Business Associate Agreement

14.0 CONFIDENTIALITY

- (a) Except where disclosure is required by law, including disclosures pursuant to a request under the California Public Records Act, each Party agrees that all information supplied by one party and its affiliates and agents (collectively, the "Disclosing Party") to the other ("Receiving Party") including, without limitation, (a) source code, prices, trade secrets, mask works, databases, designs and techniques, models, displays and manuals; (b) any unpublished information concerning research activities and plans, marketing or sales plans, sales forecasts or results of marketing efforts, pricing or pricing strategies, costs, operational techniques, or strategic plans, and unpublished financial information, including information concerning revenues, profits, and profit margins; (c) any information relating to customers, patients, business partners, or personnel; (d) Patient Information (as defined in Exhibit H), and (e) Protected Health Information (as defined in 45 C.F.R. § 160.103), will be deemed confidential and proprietary to the Disclosing Party, regardless of whether such information was disclosed intentionally or unintentionally or marked as "confidential" or "proprietary" ("Confidential Information"). The foregoing definition shall also include any Confidential Information provided by either party's contractors, subcontractors, agents, or vendors. To be deemed "Confidential Information", trade secrets and mask works must be plainly and prominently marked with restrictive legends.
- (b) Each party recognizes the importance of the other party's Confidential Information. In particular, each party recognizes and agrees that the Confidential Information of the other is critical to their respective businesses and that neither party would enter into this Agreement without assurance that such information and the value thereof will be protected as provided in this Section 14 (Confidentiality), Section 15 (Intellectual Property Rights) and elsewhere in this Agreement. Accordingly, each party agrees as follows: (a) the Receiving Party will hold any and all Confidential Information it obtains in strictest confidence and will use and permit use of Confidential Information solely for the purposes of this Agreement. Without limiting the foregoing, the Receiving Party shall use at least the same degree of care, but no less than reasonable care, to avoid disclosure or use of this Confidential Information as the Receiving Party employs with respect to its own Confidential Information of a like importance; (b) the Receiving Party may disclose or provide access to its responsible employees, agents, and consultants who have a need to know and may make copies of Confidential Information only to the extent reasonably necessary to carry out its obligations under this Agreement; and (c) the Receiving Party currently has, and in the future will maintain in effect and enforce, rules and policies to protect against access to or use or disclosure of Confidential Information other than in accordance with this Agreement, including without limitation written instruction to and agreements with employees, agents, or consultants who are bound by an obligation of confidentiality no less restrictive than set forth in this Agreement to ensure that such employees, agents, and consultants protect the confidentiality of Confidential Information, including Section 14 (Confidentiality), and Section 15 (Intellectual Property Rights). The Receiving Party will require its employees, agents, and consultants not to disclose Confidential Information to third-

parties, including without limitation customers, subcontractors, or consultants, without the Disclosing Party's prior written consent, will notify the Disclosing Party immediately of any unauthorized disclosure or use, and will cooperate with the Disclosing Party to protect all proprietary rights in and ownership of its Confidential Information.

- (c) During the course of the Agreement, Contractor and County agree not to discuss the project with any person who does not have a need to know that information for a constructive purpose that will positively impact completion of the Implementation Plan.
- (d) Contractor recognizes and acknowledges the sensitive and confidential nature of information it may obtain with regard to County and the treatment services that it provides, and agrees that information with respect to County's treatment services will be governed by Schedule D.

15.0 INTELLECTUAL PROPERTY RIGHTS

- a. All data provided by County belongs to County. All records compiled by Contractor in completing the work described in this Agreement, including but not limited to written reports, studies, drawings, blueprints, negatives of photographs, graphs, charts, plans, County specific table and dictionary codes, configuration specifications and all other similar recorded data, shall become and remain the property of County. Use or distribution of County data by Contractor is prohibited unless Contractor obtains prior written consent from County.
- b. For systems hosted or stored on equipment not owned by County, Contractor will ensure that County has full access to its data 24 x 7 x 365. Upon termination of this Agreement for any reason, Contractor will leverage the Avatar Data Warehouse Middleware to copy all tables and data onto a County SQL database server within thirty (30) days of termination of this Agreement.
- c. Notwithstanding anything to the contrary contained in this Agreement, it is understood and agreed that Contractor shall retain all of its rights in its proprietary information including, without limitation, methodologies and methods of analysis, ideas, concepts, expressions, know how, methods, techniques, skills, knowledge and experience possessed by Contractor prior to this Agreement.

16.0 NON-HIRING

During the term of this Agreement and for a period of one (1) year following its termination, neither party will directly or indirectly solicit for employment or as a consultant, an employee or consultant of the other party, or any person who was an employee or consultant of the other party at any time during the twelve (12) month period immediately prior to the date such employee or consultant is solicited, hired or retained.

17.0 FORCE MAJEURE

Neither party will be responsible for delays or failures in performance resulting from acts or events beyond its reasonable control, including but not limited to, acts of nature, governmental actions, acts of terrorism, fire, labor difficulties or shortages, civil disturbances, transportation problems, interruptions of power supply or communications or natural disasters, provided such party takes reasonable efforts to minimize the effect of such acts or events.

18.0 GENERAL PROVISIONS

- (a) **Governing Law.** This Agreement will be construed in accordance with the laws of the State of California, without giving effect to the conflict of law rules thereof. Both parties agree this Agreement does not constitute a consumer transaction.
- (b) **Entire Agreement.** This Agreement and the schedules and exhibits attached hereto contain the entire understanding of the parties with respect to the matter contained herein. There are no promises, covenants or undertakings contained in any other writing or oral communication. In the event of any conflict between or among the documents comprising this Agreement, the latest dated document will prevail.
- (c) **Amendments.** This Agreement may not be amended or modified except in a writing signed by authorized representatives of the parties.
- (d) **Waiver.** A waiver of a breach or default under this Agreement will not be a waiver of any subsequent breach or default. Failure of either party to enforce compliance with any term or condition of this Agreement will not constitute a waiver of such term or condition.
- (e) **Insolvency.** In the event that either party will cease conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of, or becomes subject to, any proceeding under a Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, then (at the option of the other party) this Agreement will terminate and be of no further force and effect and any property or rights of such other party, whether tangible or intangible, will forthwith be returned to it.
- (f) **Assignment.** The license granted hereunder to County may not be assigned, or sublicensed, or shared, nor may County use the Licensed Programs to provide the software features as a service to a third party, whether for the benefit of County or others, without the written consent of Contractor. Contractor may not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the County. The assignment of this Agreement to a majority owned affiliate of Contractor or Contractor's parent corporation will not require consent of County, provided Contractor provides thirty (30) days prior notice to County. County may, however, assign all of its rights under this Agreement to an assignee who acquires all or substantially all of the assets of County, is not a competitor of Contractor, and has financial resources at least equal to those of County. Any permitted assignee will assume in writing, all obligations of the assignor.
- (g) **Dispute Resolution.** The parties will use reasonable efforts, including, without limitation, face-to-face negotiations, to resolve any differences arising between them as a result of this Agreement prior to exercising their respective rights at law or equity.

- (h) Severability. If any provision of this Agreement is found to be invalid, illegal or unenforceable under any applicable statute or law, it is to that extent deemed to be omitted, and the remaining provisions of this Agreement will not be affected in any way.
- (i) This Agreement may be executed in two or more counterparts, each of which will be deemed an original.
- (j) Headings. The headings of the paragraphs and sections of this Agreement are for convenience only and will not control or affect the meaning or construction of any provision of this Agreement.
- (k) Compliance with Laws. The parties agree to comply with all laws and regulations, including all United States and multilateral export laws and regulations, to assure that the Licensed Programs are not exported, directly or indirectly, in violation of law.
- (l) Non-Exclusive Agreement. This Agreement is non-exclusive and both County and Contractor expressly reserve the right to contract with other entities for the same or similar services.

19.0 NOTICES

Notices required to be given to the respective parties under this Agreement shall be deemed given by any of the following means: (1) when personally delivered to the Mendocino County Behavioral Health Director or to Contractor's responsible officer; (2) when personally delivered to the party's principal place of business during normal business hours, by leaving notice with any person apparently in charge of the office and advising such person of the import and contents of the notice; (3) 24 hours after the notice is transmitted by fax machine to the other party, at the party's fax number specified pursuant to this Agreement, provided that the party giving notice by fax must promptly confirm receipt of the fax by telephone to the receiving party's office; or, (4) three (3) days after the notice is deposited in the U. S. mail with first class or better postage fully prepaid, addressed to the party as indicated below.

Notices mailed or faxed to the parties shall be addressed as follows:

TO THE COUNTY:

Behavioral Health Director
1120 S. Dora St.
Ukiah, CA 95482

TO THE CONTRACTOR:

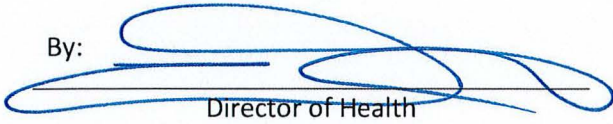
Netsmart Technologies, Inc.
Corporate Counsel
4950 College Blvd
Overland Park, Kansas 66212
Contract_Notices@ntst.com
Tel. No.: (800) 421-7503 Fax No.: (631) 968-2123

IN WITNESS WHEREOF, the County and CONTRACTOR execute this AGREEMENT as follows:

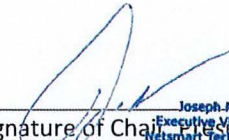
MENDOCINO COUNTY

CONTRACTOR

By:


Director of Health

By:


Signature of Chair, Board of Directors
Joseph McGovern
Executive Vice President
Vice-President
Wetsmart Technologies, Inc.

Jenine Miller, Psy.D., HHSA Assistant
Director/Behavioral Health Director

Joseph McGovern, EVP
Printed Name and Title

Dated:

3/18/20

Dated:

5/5/2020

*INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

SCHEDULE A

Description of Netsmart Programs and Third-Party Solutions and Charges

	7/1/2020 - 6/31/2021	7/1/2021 - 6/30/2022	Annual Maintenance Fee
License Software Maintenance and Support and Subscription - Renewals	Period Fees	Period Fees	Payment Terms
Annual Support – Avatar PM	\$49,958.37	\$52,456.29	Billable upon the first day of each Fiscal Year
Annual Support - DASQL	\$4,386.78	\$4,606.12	Billable upon the first day of each Fiscal Year
Avatar - Radplus Maintenance	\$4,815.72	\$5,056.51	Billable upon the first day of each Fiscal Year
Annual Support - SQL	\$4,636.88	\$4,868.72	Billable upon the first day of each Fiscal Year
Annual Support - Cache	\$9,258.91	\$9,721.86	Billable upon the first day of each Fiscal Year
Annual Support - CWS	\$13,879.93	\$14,573.93	Billable upon the first day of each Fiscal Year
Avatar – Electronic Signature	\$2,680.19	\$2,814.20	Billable upon the first day of each Fiscal Year
Speech Recognition powered	\$7,987.61	\$8,386.99	Billable upon the first day of each Fiscal Year
Document Management Maintenance– Perceptive	\$4,467.04	\$4,690.39	Billable upon the first day of each Fiscal Year
ICD 10/ DSM V - DCOD Subscription	\$3,109.85	\$3,265.34	Billable upon the first day of each Fiscal Year
Total Annual Fees	\$105,181.28	\$110,440.34	

Netsmart is not a distributor for the AMA CPT Licenses. Client is required by the AMA to license and pay all applicable fees for the right to use the AMA CPT codes.

Travel Policy (if applicable):

TRAVEL AND LIVING AND TRAVEL TIME EXPENSES Billed monthly as incurred at the most economical rates. Travel Time will be billable at \$150 per hour. Travel and Living Expenses are as follows: Meals: Charged at Netsmart's then current daily per diem rate. The current rate is \$65.00 per day Airline: Coach Class on Major Airline including any additional fees applied by the airline Personal Vehicle: Personal vehicle usage will be reimbursed at the currently defined rate by the IRS Rental Car: Mid Size vehicle at local rates Ancillaries: Gas, Tolls, Parking Hotel: At local rates	Billed as incurred
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Schedule B:

Support Services

The Support Services described in this Schedule will be performed by Contractor subject to the terms and conditions of this License and Service Agreement.

- a) Contractor will maintain the then current version of the Licensed Programs in substantial conformance with its Specifications as amended from time to time by Contractor, and with applicable Federal and State of California regulatory requirements and laws. Contractor will use commercially reasonable efforts to either:
 - (i) Correct any reproducible Problems or Defects in the then current or immediately prior release of Licensed Programs by Contractor which prevent it from operating in substantial conformance with the Specifications and applicable Federal regulatory requirements; or
 - (ii) Provide a commercially reasonable alternative that will substantially conform with the Specifications and applicable Federal regulatory requirements and laws.
- b) County will make requests for Support Services by giving Contractor written notice specifying a Problem or Defect in the Licensed Programs. In making a verbal request for Support Services, County will provide Contractor within twenty four (24) hours after such verbal notice with such written information and documentation as may be reasonably prescribed by Contractor.
- c) County will provide and maintain, at its expense, hardware and/or software to allow Contractor to access County's system remotely. County will provide Contractor with appropriate access credentials.
- d) On a timely basis Contractor will also provide County with:
 - (i) such updates as are distributed without charge to other similar County's which reflect modifications and incremental improvements made to the Licensed Programs by Contractor;
 - (ii) an opportunity to obtain enhancements to the Licensed Programs for which charges are imposed on the same terms as such enhancements are generally made available to other County's.
- e) Contractor will make technical support personnel available from 9:00 a.m. to 6:00 p.m., Contractor local time Monday through Friday, exclusive of Contractor holidays.
- f) If reasonable analysis by Contractor indicates that a reported Problem or Defect is caused by a problem related to Hardware used by County, the hardware's system software, or applicable software other than Licensed Programs, or County's misuse or modification of the Licensed Programs, Contractor's responsibility will be limited to the correction of the portion, if any, of the problem caused by a Problem or Defect in the Licensed Programs. County will, at Contractor's option, pay Contractor for the cost of analyzing the reported problem at Contractor's then prevailing time-and-materials rate.
- g) The initial term for provision of Support Services for Licensed Programs will begin on July 1, 2018 and end on June 30, 2020.
- h) Contractor agrees that it will not revise the Charges for Support Services during the initial term. In accordance with Section 4 of the Agreement, Contractor will give County not less than ninety (90) days written notice prior to the expiration of the initial term of the Agreement to commence negotiations on Support Service Charges as part of the parties' negotiations on any option to extend the Agreement. Charges will not be increased for any extension term by more than the most recent increase in the US Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U) - Medical Care or 5%, whichever is higher.
- i) Absent a bona fide dispute, if County fails to pay for Support Services when due, Contractor may refuse to provide Support Services until County makes payment of all Charges due. If County has missed any mandatory upgrades Contractor will also charge, and County will pay, for software and services necessary to bring the Licensed Programs up to Contractor's then-current level before Contractor will certify that County is again eligible for maintenance hereunder.
- j) Guardiانت is included at no charge provided County is current on maintenance. Guardiانت is a diagnostic tool that monitors the health of County's licensed Contractor solutions and provides the ability to review technical configuration and metric data not limited to; configuration changes, support case activities, system usage, application events, licensing, user activity, and installed updates in a dashboard view.
- k) If analysis by Contractor indicates that a reported problem is caused by a reproducible Problem or Defect, Contractor will use commercially reasonable efforts to provide Support Services in accordance with the following prioritization of reported problems:

Priority	Definition
1 - Critical	<p>Priority 1: will be assigned when the Contractor Program or a material Contractor Program Function component is non-operational as a result of a defect [in Production environment only] such as the Production system cannot be accessed or utilized in any capacity, a direct patient safety issue is present, or a HIPAA compliance violation as a result of a server incident or Contractor application defect. Best efforts will be made to correct Priority 1 problems, or to provide a plan for such correction, within two (2) business days.</p> <p><u>County's Commitment:</u></p> <ul style="list-style-type: none"> • This case Priority must be called in directly to the Contractor Support department. • County provides specific, detailed information required for troubleshooting/investigation. • County provides appropriate staff and resources to sustain continuous communication and work effort as required. • Without appropriate County resources, the case will be downgraded to Priority 2 after three (3) business days.
2 – High	<p>Priority 2: will be assigned to Production defects that result in functions that have a significant negative impact on daily operations but do not constitute as a “System Down”. A workaround may be available and/or the capacity to maintain daily business functionality. Commercially reasonable efforts will be made to correct Priority 2 problems, or to provide a plan for such correction, within five (5) business days.</p> <p><u>County's Commitment:</u></p> <ul style="list-style-type: none"> • County provides specific, detailed information required for troubleshooting/investigation. • County provides appropriate staff and resources to sustain continuous communication and work effort as required. • Without appropriate County resources, the case will be downgraded to Priority 3 after six (6) business days.
3-Medium	<p>Priority 3: will be assigned for system defects that result in functions that have no major impact on daily operations. An issue that allows the continuation of function, including issues in which a reasonable workaround is available. Commercially reasonable efforts will be made to correct Priority 3 problems, or to provide a plan for such correction, within ten (10) business day.</p> <p><u>County's Commitment:</u></p> <ul style="list-style-type: none"> • County provides specific, detailed information required for troubleshooting/investigation. • County provides appropriate staff and resources to sustain continuous communication and work effort as required. • Without appropriate County resources, the case will be downgraded to Priority 4 after eleven (11) business days.
4 – Low	<p>Priority 4: will be assigned to cosmetic defects that do not affect system usability or non-defect related requests including, but not limited to, system set up/configuration, training, functionality questions, documentation, portal access, and upgrade requests. Commercially reasonable efforts will be made to address Priority 4 issues, or to provide a plan for such correction, within fifteen (15) business day.</p> <p><u>County's Commitment:</u></p> <ul style="list-style-type: none"> • County provides specific, detailed information required for troubleshooting/investigation. • County provides appropriate staff and resources to sustain continuous communication and work effort as required. • Without appropriate County resources, the case will be closed following our Case Closure Notification policy.

Schedule C: Confidentiality of Patient Information

All patient information and records are confidential. Contractor shall maintain the confidentiality of all patient records, including billings and computerized records, in accordance with all applicable state and federal law relating to confidentiality of patient records and patient information, including but not limited to: HIPAA, HITECH, and the HIPAA Regulations; 42 U.S.C. § 290dd-2 and the Part 2 Regulations; the Lanterman-Petris-Short Act ("LPS"), California Welfare and Institutions Code § 5328, *et seq.*; California substance abuse laws at California Health & Safety Code §§ 11812 and 11845.5; federal and state Medicaid and Medi-Cal laws at 45 C.F.R. § 205.50, 42 C.F.R. §§ 431.300 *et seq.* and California Welfare and Institutions Code § 10850, *et seq.*, the Confidentiality of Medical Information Act ("CMIA") at California Civil Code sections 56.00 *et seq.*, California laws governing HIV/AIDS records at California Health & Safety Code § 120975, and California Civil Code Section 1798.29.

"Patient Information" includes any individually identifying information related to a patient/recipient of services including, but not limited to: name, identifying numbers, symbol, fingerprint, photograph or voice print. In addition, "Patient Information" includes all information Contractor has obtained about a patient/recipient of services, including the mere fact that patient is receiving alcohol or drug treatment from the County or has been referred to an alcohol or drug treatment program by the County, whether or not a documentary record of such information exists.

Ownership of Information. All Patient Information created, maintained, received, or transmitted by the Contractor for or on or behalf of the County in connection with the Services under this Agreement shall be and remain the property of the County and the County shall retain exclusive rights and ownership thereto. Such information shall be referred to henceforth as "County Information".

Use and Disclosure of Patient Information. Contractor shall use County Information or Patient Information obtained from contact with patients/recipients of Services and complainants (including anonymized data) only for the purpose(s) for which use or disclosure was authorized and shall implement appropriate safeguards to maintain the confidentiality of such information and to prevent further use or disclosure. Contractor acknowledges that County Information regarding a patient whose records are subject to the Part 2 Regulations may not be re-disclosed to another entity without specific authorization from the patient or his/her legally authorized representative for such re-disclosure. In addition, Contractor shall obtain the County's prior written consent to any disclosure of County Information, except as required by law. The County, through the Behavioral Health Director, shall have access to any Patient Information created, received, transmitted, or maintained by Contractor in connection with its performance under this Agreement.

Contractor shall use County Information or Patient Information gained from access to records and from contact with patients/recipients of service and complainants (including anonymized data) only for the purpose(s) for which use or disclosure was authorized and shall implement appropriate safeguards to maintain the confidentiality of such information and to prevent further use or disclosure. Contractor shall not disclose Patient Information, including the identities of patients/recipients of service, without proper authorization to such disclosure or as required by law. Contractor further acknowledges that County Information regarding a patient whose records are subject to the Part 2 Regulations may not be re-disclosed to another entity without specific authorization from the patient or his/her legally authorized representative for such re-disclosure. In addition, Contractor shall obtain County's authorization to such disclosure prior to any release of Patient Information. The County, through the Behavioral Health Director, shall have access to such confidential information.

Contractor shall return or securely destroy County Information as directed by the County. Transfer to the County or a third party designated by the County shall occur within a reasonable period of time, and without significant interruption in service. In the event that County requires destruction of County Information,

Contractor agrees to securely destroy all data in its possession and in the possession of any subcontractors or agents to which the Contractor may have transferred County Information. Contractor agrees to provide certification of data destruction to County.

Contractor shall notify County of any security breach or suspected security breach of any County Information or covered under applicable federal regulations set forth in 12 C.F.R. Part 30, or under California Civil Code 1798.29, or any other breach of County Information immediately following discovery, if the information was, or is reasonably believed to have been acquired by an unauthorized person. Notification must be given in the most expedient time possible and without unreasonable delay. Written confirmation must be sent within two (2) days of discovery or notification of the breach or suspected breach. A "breach" means the unauthorized acquisition of computerized data that constitutes Personal Information that compromises the security, confidentiality, or integrity of the information. A breach is also the acquisition, access, use, or disclosure of Protected Health Information in a manner not permitted under the HIPAA Privacy Rule which compromises the security or privacy of the Protected Health Information, and/or the unauthorized access, use, or disclosure of Medical Information under CMIA.


Penalty for Unauthorized Disclosure. Contractor understands that disclosure of Patient Information in violation of state or federal law may subject the party releasing the information to civil and/or criminal fines, penalties, including but not limited to a minimum of \$10,000 in civil damages, as set forth in Welfare and Institutions Code Section 5330.

Duty to Warn. Contractor understands that persons providing services under this Agreement may, in certain situations involving a patient or recipient of services who is a danger to himself or others, have a duty to warn third parties of such danger and should consult supervisory staff and/or legal counsel about such duty to warn as appropriate.

Dissemination of these Confidentiality Provisions. Contractor shall inform all its officers, employees, agents, and subcontractors providing services hereunder of these provisions.

Indemnification. Netsmart will indemnify, defend and hold harmless County and its respective employees, directors, officers, subcontractors, agents and affiliates from and against all claims, actions, damages, losses, liabilities, fines, penalties, costs or expenses (including without limitation reasonable attorneys' fees) suffered by CONTRACTOR arising from any negligent or wrongful acts or omissions in connection with this Schedule C, by Netsmart or by its employees, directors, officers, subcontractors, or agents. In addition, CONTRACTOR will reimburse County for its actual out of pocket costs of notice, mitigation or remediation of any privacy breach caused by any act or omission of Contractor.

By my signature below, as the authorized representative of the Contractor named below, I certify acceptance and understanding for myself and the Contractor of the above confidentiality provisions.



Signature of Authorized Representative

05-05-2020

Date

Netsmart Technologies, Inc.

Business Name of Contractor
JOSEPH MCGOVERN

Name of Authorized Representative
(printed)
EVP

Title of Authorized Representative

Schedule D:

QUALIFIED SERVICE ORGANIZATION/BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”), effective July 1, 2020 (Effective Date”), is entered into by and among the County of Mendocino, a political subdivision of the State of California, on behalf of the Health Department (“Covered Entity”) and Netsmart Technologies, Inc. (“Business Associate”) (each a “Party” and collectively the “Parties”) hereby enter into this Qualified Service Organization Agreement under the Part 2 Regulations and Business Associate Agreement under HIPAA.

Business Associate provides certain services (“Services”) for Covered Entity under this Agreement that involve the use and disclosure of Protected Health Information that is created, received, transmitted, or maintained by Business Associate from, or on behalf of, Covered Entity (“PHI”).

The County is a “Covered Entity” as that term is defined in the Privacy Rule and the Security Regulations and Netsmart Technologies, Inc. is a “Business Associate” as that term is defined in the Privacy Rule;

Business Associate is also a Qualified Service Organization, as defined in 42 C.F.R. Part 2.11, providing services to Covered Entity.

The Parties are committed to complying with the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subparts A and E as amended from time to time (the “Privacy Regulation”), the Breach Notification Standards, 45 C.F.R. Part 160 and Part 164, Subparts A and D (the “Breach Notification Regulation”), and with the Security Standards, 45 C.F.R. Part 160 and Part 164, Subpart C as amended from time to time (the “Security Regulation”) under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as amended by the Health Information Technology for Economic and Clinical Health Act and its implementing regulations (“HITECH”) and the restrictions on use and disclosure imposed under the Confidentiality of Alcohol and Drug Abuse Patient Records under 42 U.S.C. § 290dd-2 and 42 C.F.R. Part 2 (the “Part 2 Regulations”). Collectively, the Privacy Rule, Security Rule, and Breach Notification Rule are referred to as the HIPAA Regulations.

Business Associate acknowledges that, pursuant to HITECH, 45 C.F.R. §§ 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards), 164.316 (policies and procedures and documentation requirements) and 164.502 *et seq.* apply to Business Associate in the same manner that such sections apply to Covered Entity. The additional requirements of Title XIII of HITECH contained in Public Law 111-005 that relate to privacy and security and that are made applicable with respect to covered entities shall also be applicable to Business Associate.

Business Associate is committed to complying with applicable California law, including but not limited to, the California Confidentiality of Medical Information Act, Cal. Civil Code §§ 56 *et seq.* (“CMIA”), the Lanterman-Petris-Short Act (“LPS”) Cal. Welf. & Inst. Code § 5328 *et seq.*, California substance abuse laws Cal. Health & Safety Code §§ 11812 and 11845.5; California laws governing HIV/AIDS records at California Health & Safety Code § 120975, and California Civil Code Section 1798.29. Collectively, these and other applicable laws shall be referred to as “California Laws”)

Business Associate is committed to complying with any applicable Medi-Cal requirements at 45 C.F.R. § 205.50, 42 C.F.R. § 431.300, *et seq.* and Cal. Welf. & Inst. Code § 10850, *et seq.* (“Medi-Cal requirements”).

Business Associate is also committed to complying with applicable requirements of the Red Flag Rules issued pursuant to the Fair and Accurate Credit Transactions Act of 2003 (“Red Flag Rules”).

Business Associate acknowledges that the general prohibitions on re-disclosure under the Part 2 Regulations do not allow Business Associate to disclose patient identifying information to another entity without patient authorization, even where the Privacy Rule might allow disclosure;

Business Associate acknowledges that a person's mere participation in an alcohol/drug program is confidential, as is any information about the individual;

Business Associate acknowledges that the CMIA prohibits Business Associate from further disclosing PHI that it receives from Covered Entity where such disclosure would be violative of the CMIA, LPS, or other state or federal law.

Business Associate acknowledge that disclosure of confidential matters can be a violation of federal law and can subject Covered Entity, individual persons, and/or the Business Associate to potential criminal and civil sanctions and fines;

This Agreement sets forth the terms and conditions pursuant to which PHI, and, when applicable, Electronic Protected Health Information ("EPHI"), and the information protected under the Part 2 Regulations ("Part 2 Information") shall be handled. The Parties further acknowledge that state statutes or other laws or precedents may impose additional obligations, including data breach notification or information security obligations, and it is their the Parties' further intention that each shall comply with such laws as well as HITECH and HIPAA in the collection, handling, storage, and disclosure of personal data of patients or other personal identifying information exchanged or stored in connection with their relationship.

The Parties agree as follows:

DEFINITIONS

All capitalized terms used in this Agreement but not otherwise defined shall have the meaning set forth in the Privacy Rule, Security Rule and HITECH.

PERMITTED USES AND DISCLOSURES OF PHI

Unless otherwise limited herein, Business Associate may:

(a) use or disclose PHI to perform functions, activities or Services for, or on behalf of, Covered Entity as requested by Covered Entity from time to time, provided that such use or disclosure would not violate the Privacy or Security Regulations or the standards for Business Associate Agreements set forth in 45 C.F.R. § 164.504(e), exceed the minimum necessary to accomplish the intended purpose of such use or disclosure, violate the additional requirements of HITECH contained in Public Law 111-005 that relate to privacy and security, or violate the 42 C.F.R. Part 2 Regulations, California Law, Medi-Cal Requirements, and other applicable federal or state law;

(b) disclose PHI for the purposes authorized by this Agreement only: (i) to its employees, subcontractors and agents; (ii) as directed by this Agreement; or (iii) as otherwise permitted by the terms of this Agreement;

(c) use PHI in its possession to provide Data Aggregation Services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B) if necessary to provide the Services under this Agreement;

(d) use PHI in its possession for proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate as permitted by 45 C.F.R. § 164.504(e)(4)(i);

(e) use PHI to report violations of law to appropriate Federal and state authorities, consistent with 45 C.F.R. § 164.502(j)(1) and to the extent permitted by the 42 C.F.R. Part 2 Regulations, California Law, and Medi-Cal Requirements;

(f) de-identify any PHI obtained by Business Associate under this Agreement for further use or disclosure only to the extent such de-identification is necessary for the provision of Services pursuant to this Agreement, and use such de-identified data in accordance with 45 C.F.R. § 164.502(d)(1); and

RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI

Responsibilities of Business Associate. With regard to its use and/or disclosure of PHI, Business Associate shall:

(a) acknowledge that PHI may also be subject to the Part 2 Regulations (referred to as “Part 2 Information”) and that it is fully bound by the provisions of the Part 2 Regulations and the HIPAA Regulations in receiving, transmitting, transporting, storing, processing, or otherwise dealing with, any Part 2 Information as it would apply to a “program” as defined in the Part 2 Regulations.

(b) ensure that any Part 2 Information will not be re-disclosed to any other person or entity, including an agency or Subcontractor who provides services to Business Associate, except as permitted by the Part 2 Regulations;

(c) resist any efforts in judicial or administrative proceedings (including court order and subpoena) if necessary, any efforts to obtain access to information pertaining to PHI and Part 2 Information, except as permitted by the Part 2 Regulations;

(d) use and/or disclose the PHI only as permitted or required by this Agreement or as otherwise Required by Law;

(e) report to the privacy officer of Covered Entity immediately (i) any use and/or disclosure of the PHI that is not permitted or required by this Agreement of which Business Associate becomes aware, and (ii) any Breach of unsecured PHI as specified by HITECH, the Breach Notification Rule, and (iii) any actual or suspected use or disclosure of data in violation of any applicable federal or state laws by Business Associate or its agents or subcontractors upon Business Associate’s determination of the occurrence of such unauthorized use and/or disclosure. In such event, the Business Associate shall, in consultation with the Covered Entity, mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of such improper use or disclosure. The notification of any Breach of unsecured PHI shall include, to the extent possible, the identification of each individual whose unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, used or disclosed during the Breach, as well as any other available information that Covered Entity is required to include in Breach notification to the individual, the media, the Secretary, and any other entity under the Breach Notification Rule and any other applicable state or federal laws, including, but not limited to, 45 C.F.R. §§ 164.404 through 164.408. If any required information is not available at the time of notification, it shall be reported to Covered Entity as soon as such information becomes

available. Business Associate shall cooperate fully with Covered Entity in meeting Covered Entity's obligations with respect to such Breach.

(f) use commercially reasonable safeguards to maintain the security of the PHI and to prevent use and/or disclosure of such PHI other than as provided herein;

(g) obtain and maintain an agreement with each of its subcontractors and agents that receive, use, or have access to PHI pursuant to which agreement such subcontractors and agents agree to adhere to the same restrictions, conditions, and requirements on the use and/or disclosure of PHI that apply to Business Associate pursuant to this Agreement;

(h) make available all internal practices, records, books, agreements, policies and procedures and PHI relating to the use and/or disclosure of PHI to the Secretary for purposes of determining Covered Entity or Business Associate's compliance with the Privacy Rule;

(i) document disclosures of PHI and information related to such disclosure and, within ten (10) days of receiving a written request from Covered Entity, provide to Covered Entity such information as is requested by Covered Entity to permit Covered Entity to respond to a request by an individual for an accounting of the disclosures of the individual's PHI in accordance with 45 C.F.R. § 164.528, as well as provide an accounting of disclosures, as required by HITECH, directly to an individual provided that the individual has made a request directly to Business Associate for such an accounting. At a minimum, the Business Associate shall provide the Covered Entity with the following information: (i) the date of the disclosure, (ii) the name of the entity or person who received the PHI, and if known, the address of such entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. In the event the request for an accounting is delivered directly to the Business Associate, the Business Associate shall, within two (2) business days, forward such request to the Covered Entity. The Business Associate shall implement an appropriate recordkeeping process to enable it to comply with the requirements of this Section;

(j) subject to Section 4.4 below, return to Covered Entity within twenty-one (21) days of the termination of this Agreement, the PHI in its possession and retain no copies, including backup copies;

(k) disclose to its subcontractors, agents or other third parties, and request from Covered Entity, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder;

(l) if all or any portion of the PHI is maintained in a Designated Record Set:

(i) upon ten (10) business days' prior written request from Covered Entity, provide access to the PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, the individual to whom such PHI relates or his or her authorized representative to meet a request by such individual under 45 C.F.R. § 164.524; and

(ii) upon ten (10) business days' prior written request from Covered Entity, make any amendment(s) to the PHI that Covered Entity directs pursuant to 45 C.F.R. § 164.526;

(m) maintain policies and procedures to detect and prevent identity theft in connection with the provision of the Services, to the extent required to comply with the Red Flag Rules;

(n) notify the Covered Entity within five (5) days of the Business Associate's receipt of any request or subpoena for PHI. To the extent that the Covered Entity decides to assume responsibility for challenging the validity of such request, the Business Associate shall cooperate fully with the Covered Entity in such challenge;

- (o) maintain a formal security program materially in accordance with all applicable data security and privacy laws and industry standards designed to ensure the security and integrity of the Covered Entity's data and protect against threats or hazards to such security;
- (p) to the extent that Business Associate carries out one or more of Covered Entity's obligations under the Privacy Rule, comply with the requirements of Privacy Rule that apply to the Covered Entity in the performance of such obligations. Business Associate further acknowledges that, pursuant to HITECH, the applicable provisions of HIPAA apply to Business Associate in the same manner that such sections apply to Covered Entity;
- (q) acknowledge that it is obligated by law to comply, and represents and warrants that it shall comply, with HIPAA, HITECH, the HIPAA Regulations, the Part 2 Regulations, and the Red Flags Rules, as applicable. Business Associate further represents and warrants that it shall comply with all applicable state privacy and security laws, to the extent that such state laws are not preempted by HIPAA or HITECH and acknowledges that, as between the Business Associate and the Covered Entity, all PHI shall be and remain the sole property of the Covered Entity.

Additional Responsibilities of Business Associate with Respect to EPHI. In the event that Business Associate has access to EPHI, in addition to the other requirements set forth in this Agreement relating to PHI, Business Associate shall:

- (a) implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity as required by 45 C.F.R. Part 164, Subpart C;
- (b) ensure that any subcontractor or agent to whom Business Associate provides any EPHI agrees in writing to implement reasonable and appropriate safeguards to protect such EPHI; and
- (c) report to the privacy officer of Covered Entity, in writing, any Security Incident involving EPHI of which Business Associate becomes aware within two (2) business days of Business Associate's discovery of such Security Incident or sooner if practical. For purposes of this Section, a Security Incident shall mean (consistent with the definition set forth at 45 C.F.R. § 164.304), the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system. In such event, the Business Associate shall, in consultation with the Covered Entity, mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of such improper use or disclosure. For purposes of this Schedule D "Security Incident" does not include trivial incidents that occur on a daily basis, such as scans, "pings", or unsuccessful attempts to penetrate computer networks or servers maintained by Business Associate. If such Security Incident constitutes a Breach of Unsecured PHI, Business Associate shall comply with the notification

requirements set forth in Section 1.02(e).

Responsibilities of Covered Entity. Covered Entity shall, with respect to Business Associate:

- (a) provide Business Associate a copy of Covered Entity's notice of privacy practices ("Notice") currently in use;
- (b) notify Business Associate of any limitations in the Notice pursuant to 45 C.F.R. § 164.520, to the extent that such limitations may affect Business Associate's use or disclosure of PHI;
- (c) notify Business Associate of any changes to the Notice that Covered Entity provides to individuals pursuant to 45 C.F.R. § 164.520, to the extent that such changes may affect Business Associate's use or disclosure of PHI;
- (d) notify Business Associate of any changes in, or withdrawal of, the consent or authorization of an individual regarding the use or disclosure of PHI provided to Covered Entity pursuant to 45 C.F.R. § 164.506 or § 164.508, to the extent that such changes may affect Business Associate's use or disclosure of PHI; and
- (e) notify Business Associate, in writing and in a timely manner, of any restrictions on use and/or disclosure of PHI as provided for in 45 C.F.R. § 164.522 agreed to by Covered Entity, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

TERMS AND TERMINATION

Term. This Agreement shall become effective on the Effective Date and shall continue in effect unless terminated as provided in this Article 4. Certain provisions and requirements of this Agreement shall survive its expiration or other termination as set forth in Section 5.1 herein.

Termination. Either Covered Entity or Business Associate may terminate this Agreement and any related agreements if the terminating Party determines in good faith that the terminated Party has breached a material term of this Agreement; provided, however, that no Party may terminate this Agreement if the breaching Party cures such breach to the reasonable satisfaction of the terminating Party within thirty (30) days after the breaching Party's receipt of written notice of such breach.

Automatic Termination. This Agreement shall automatically terminate without any further action of the Parties upon the termination or expiration of Business Associate's provision of Services to Covered Entity.

Effect of Termination. Upon termination or expiration of this Agreement for any reason, Business Associate shall return all PHI pursuant to 45 C.F.R. § 164.504(e)(2)(ii)(I) if, and to the extent that, it is feasible to do so. Prior to doing so, Business Associate shall recover any PHI in the possession of its subcontractors or agents. To the extent it is not feasible for Business Associate to return or destroy any portion of the PHI, Business Associate shall provide Covered Entity a statement that Business Associate has determined that it is infeasible to return or destroy all or some portion of the PHI in its possession or in possession of its subcontractors or agents. Business Associate shall extend any and all protections, limitations and restrictions contained in this Agreement to any PHI retained after the termination of this Agreement until such time as the PHI is returned to Covered Entity or destroyed.

MISCELLANEOUS

Survival. The respective rights and obligations of Business Associate and Covered Entity under the provisions of Sections 4.4, 5.1, 5.6, and 5.7, and Section 2.1 (solely with respect to PHI that Business Associate retains in accordance with Section 4.4 because it is not feasible to return or destroy such PHI), shall survive termination of this Agreement until such time as the PHI is returned to Covered Entity or destroyed. In addition, Section 3.1(i) shall survive termination of this Agreement, provided that Covered Entity determines that the PHI being retained pursuant to Section 4.4 constitutes a Designated Record Set.

Amendments; Waiver. This Agreement may not be modified or amended, except in a writing duly signed by authorized representatives of the Parties. To the extent that any relevant provision of the HIPAA, HITECH or Red Flag Rules is materially amended in a manner that changes the obligations of Business Associates or Covered Entities, the Parties agree to negotiate in good faith appropriate amendment(s) to this Agreement to give effect to the revised obligations. Further, no provision of this Agreement shall be waived, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

Notices. Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party's address given below, and/or via facsimile to the facsimile telephone numbers listed below.

If to Business Associate, to:
Netsmart Technologies, Inc.
4950 College Blvd.
Overland Park, KS
Attn: Chief Privacy Officer
Tel: 800-421-7503

If to Covered Entity, to:

Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner hereinabove provided. Such notice is effective upon receipt of notice, but receipt is deemed to occur on next business day if notice is sent by FedEx or other overnight delivery service.

Counterparts; Facsimiles. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

Choice of Law; Interpretation. This Agreement shall be governed by the laws of the State of California; as provided, however, that any ambiguities in this Agreement shall be resolved in a manner that allows Business Associate to comply with the Privacy Rule, and, if applicable, the Security Rule and the CMIA.

Indemnification Business Associate will indemnify, defend and hold harmless Covered Entity and its respective employees, directors, officers, subcontractors, agents and affiliates from and against all claims, actions, damages, losses, liabilities, fines, penalties, costs or

expenses, including reasonable attorneys' fees (Damages) suffered by Covered Entity arising from any acts or omissions in connection with this Agreement, by Business Associate or by its employees, directors, officers, subcontractors, or agents. The referenced limitation of liability will not apply to and Netsmart will fully indemnify Covered Entity for:

(a) Covered Entity's reasonable costs of notice, mitigation or remediation of any Breach of Unsecured PHI or acquisition, access, use, or disclosure of data in a manner not permitted by this Agreement that is attributable to any act or omission of Business Associate or its agents or subcontractors.

(b) Fines or penalties that are assessed against Covered Entity by a state or federal regulatory agency for an act or omission of Business Associate or by its employees, directors, officers, subcontractors, or agents on a theory of agency or vicarious liability.

(c) Damages resulting from any negligent or willful acts or omissions of Covered Entity in connection with this Agreement are excepted from this indemnification requirement. It is the intent of the parties to this Agreement to provide the broadest possible indemnification for Covered Entity.

Business Associate shall reimburse Covered Entity for all costs, attorneys' fees, expenses, and liabilities incurred by Covered Entity with respect to any investigation, enforcement proceeding or litigation in which Business Associate is obligated to indemnify, defend, and hold harmless Covered Entity under this Agreement. This provision is in addition to and independent of any indemnification provision in any related or other agreement between the Covered Entity and the Business Associate, including the underlying Agreement.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf as of the Effective Date.

NETSMART

By: _____

Print Name: _____

Print Title: _____

Date: _____

**COUNTY OF MENDOCINO, ON BEHALF OF
THE BEHAVIORAL HEALTH DEPARTMENT**

By: _____

Print Name: _____

Print Title: _____

Date: _____

IN WITNESS WHEREOF
DEPARTMENT FISCAL REVIEW:

By: [Signature]
Jenine Miller, Psy.D., HHSA Assistant
Director/ Behavioral Health Director

Date: 3/20/20

Budgeted: ☒ Yes ☐ No

Budget Unit: 4050/4012

Line Item: 86-2230

Org/Object Code: MHAD75/DDADMIN

Grant: ☐ Yes ☒ No

COUNTY OF MENDOCINO

By: [Signature]
JOHN HASCHAK, Chair
BOARD OF SUPERVISORS

Date: JUN 15 2020

ATTEST:

CARMEL J. ANGELO, Clerk of said Board

By: [Signature]
Deputy

JUN 15 2020

I hereby certify that according to the provisions of
Government Code section 25103, delivery of this
document has been made.

CARMEL J. ANGELO, Clerk of said Board

By: [Signature]
Deputy

JUN 15 2020

INSURANCE REVIEW:

By: [Signature]
Risk Management

Date: 4/14/2020

CONTRACTOR/COMPANY NAME

By: [Signature]
Joseph McGovern, Executive Vice
President

Date: 05-05-2020

NAME AND ADDRESS OF CONTRACTOR:

Netsmart Technologies, Inc.
4950 College Blvd.
Overland Park, KS 66211

913-272-2269; ACollins@ntst.com

By signing above, signatory warrants and
represents that he/she executed this Agreement
in his/her authorized capacity and that by his/her
signature on this Agreement, he/she or the entity
upon behalf of which he/she acted, executed
this Agreement

COUNTY COUNSEL REVIEW:

APPROVED AS TO FORM:

CHRISTIAN M. CURTIS,
Acting County Counsel

By: [Signature]
Deputy

Date: 4/14/2020

EXECUTIVE OFFICE/FISCAL REVIEW:

By: [Signature]
Deputy CEO

Date: 4/14/2020

Signatory Authority: \$0-25,000 Department; \$25,001- 50,000 Purchasing Agent; \$50,001+ Board of Supervisors

Exception to Bid Process Required/Completed ☒ ER 26-110

Exempt Pursuant to MCC Section: Out of county contractor